



Comptroller General  
of the United States  
Washington, D.C. 20548

149,395  
Furnish

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## Decision

**Matter of:** MKB Constructors, Joint Venture--  
Reconsideration

**File:** B-250413.2

**Date:** June 8, 1993

B. Michael Schestopol, Esq., and John Lukjanowicz, Esq.,  
Oles, Morrison & Rinker, for the protester.  
John L. Formica, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Request for reconsideration is denied where the requesting party fails to show any legal or factual basis warranting reconsideration of our prior decision.

### DECISION

MKB Constructors, Joint Venture, requests reconsideration of our decision in MKB Constructors, Joint Venture, B-250413, Jan. 15, 1993, 93-1 CPD ¶ 50, in which we denied MKB's protest of the award of a contract to Max J. Kuney Company under invitation for bids (IFB) No. 92-07-R17, issued by the Federal Highway Administration, Department of Transportation, for the construction of a bridge and a roadway over Laughingwater Creek, Mount Ranier National Park, Washington.

We deny the request for reconsideration.

The IFB contemplated the award of a firm, fixed-price contract, and included a bid schedule consisting of 60 line items and a line on which bidders were to insert their total bid price. The IFB specified that bidders were to enter prices for each bid schedule line item, and provided that a single award would be made to the bidder with the lowest total price for all line items. The IFB expressly incorporated Federal Acquisition Regulation (FAR) § 52.214-18(c), which states that the failure to bid on a line item will cause the bid to be rejected.

Kuney submitted the low bid of \$2,789,329, and MKB submitted the second low bid of \$2,892,211. Upon examination of the bids, the agency found that Kuney had omitted its lump sum price for line item 555(7)--Structural Metal, Furnished,

Fabricated and Erected--and that the sum of the 59 line items completed by Kuney was \$2,379,304. The contracting officer concluded that Kuney had mistakenly omitted its price for the line item 555(7), and that the price intended by Kuney could be derived by subtracting the sum of the 59 line items completed by Kuney (e.g., \$2,379,304) from the total price for the project specified by Kuney on the bid schedule (e.g., \$2,892,211). In reaching this conclusion the agency noted that the remainder of this calculation--\$409,025--was in line with the other bidders' prices and the independent government estimate for item 555(7). The contracting officer thus determined that Kuney's omission of a price for item 555(7) was an error, that Kuney's intended price for item 555(7) was \$409,025, and that Kuney's bid was responsive.

We denied MKB's protest that Kuney's bid should have been rejected as nonresponsive because of Kuney's omission of a price for line item 555(7), explaining that while a bid which fails to include a price for every item required by the IFB generally must be rejected as nonresponsive, E.H. Morrill Co., 63 Comp. Gen. 348 (1984), 84-1 CPD ¶ 508; HH&K Builders, B-232140, Oct. 20, 1988, 88-2 CPD ¶ 379, recon. denied, Nov. 30, 1988, 88-2 CPD ¶ 537, there is a limited exception to this rule under which the omission of a price for a certain line item does not render the bid nonresponsive and may be corrected if the bid, as submitted, indicates that an error was made, the exact nature of the error, and the intended price for the bid item. Werres Corp., B-211870, Aug. 23, 1983, 83-2 CPD ¶ 243; Lyon Shipyard, Inc., B-208978, Sept. 27, 1982, 82-2 CPD ¶ 287; Carter Constr. Co., Inc., B-187889, Apr. 4, 1977, 77-1 CPD ¶ 231.

Because of the unitary nature of the project as established by the IFB, we found that Kuney, which had submitted a bid that contained a total bid price that exceeded, by a substantial amount, the sum of 59 out of 60 line item bid prices, was clearly intended to include a price for line item 555(7), and that the intended price was determinable from the bid itself. In this regard, we concluded that since Kuney's bid as submitted contained prices for 59 of the 60 bid schedule line items totalling \$2,379,304, and a total price for the project of \$2,892,211, it was clear that Kuney mistakenly omitted a price for line item 555(7) and that the intended price for this line item was \$409,025--the difference between the total price kuney bid and the sum of the 59 line items for which Kuney specified prices.

MKB requested reconsideration of our prior decision on three separate bases. First, MKB states that we failed to consider the fact that MKB's intended bid for item 555(7)

was \$408,000 rather than \$409,025 as stated in our decision. MKB also asserts that we improperly ignored the mandatory language of FAR § 52.214-18(c). Finally, MKB asserts that we improperly interpreted and misapplied existing case law in recognizing the exception to the rule requiring the rejection of bids that do not include prices for all items.

In order to obtain reconsideration, the requesting party must show that our prior decision may contain either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1993). Mere disagreement with our decision does not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

In its request for reconsideration, MKB first points out, as it did during its original protest to our Office, that after bid opening Kuney had provided the agency with a worksheet which showed that its intended price for line item 555(7) was \$408,000. MKB thus argues that our decision finding Kuney's bid responsive contains "an egregious error of fact, which undermines the basis for the [d]ecision," because it is clear that Kuney intended a price of \$408,000 for line item 555(7), and not \$409,025.

"Responsiveness," as it applies to the sealed bidding method of contracting as used by the federal government, is determined as of the time of bid opening and involves whether the bid, as submitted, represents an unequivocal offer to provide the products or services as specified in the IFB at a firm, fixed-price so that the acceptance of the bid would bind the contractor in all significant aspects, including price. Reid & Gary Strickland Co., B-239700, Sept. 17, 1990, 90-2 CPD ¶ 222. As explained in our decision, even though Kuney omitted a price for line item 555(7), its bid was responsive because the bid, as submitted, indicated that the omission was an error as well as the intended price for line item 555(7). Because only material available at bid opening can be considered in making a responsiveness determination and a bidder's post-bid opening explanation of its intent cannot be considered, the worksheets submitted by Kuney after bid opening could not be considered in determining whether Kuney's bid, as submitted, was responsive, and the worksheets are thus not relevant to the propriety of either the agency's or our

Office's determination concerning the responsiveness of Kuney's bid.<sup>1</sup> Doug Jones Sawmill, B-239996, Sept. 19, 1990, 90-2 CPD ¶ 233; Sess Constr. Co., 64 Comp. Gen. 355 (1985), 85-1 CPD ¶ 319.

MKB next contends that we erred in according "no legal significance" to the mandatory language in FAR § 52.214-18(c) that required the rejection of bids that did not include prices for all items. Our decision stated that there was no legal significance to the fact that this language was contained in a mandatory FAR clause included in the solicitation as opposed to being included in a provision that was otherwise included in the solicitation. In other words, the solicitation language mandating the rejection of bids that do not contain prices for all items has the same legal effect upon bidders who fail to follow such advice, whether it was required by the FAR to be included in the solicitation or whether it was included in the solicitation for other reasons. See generally Planning Research Corp. Public Mgmt. Servs., Inc., 55 Comp. Gen. 911, 924-929 (1976), 76-2 CPD ¶ 202.

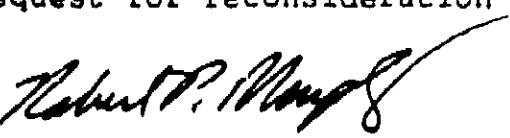
As explained in our prior decision, a bid, which omits a price for an item, is responsive, even in the face of mandatory solicitation language requiring the rejection of bids that do not price all items, in the limited circumstance where the bid itself establishes both the exact nature of the error and intended price for the unpriced bid item. Werres Corp., supra. The acceptance of such a responsive bid constitutes the correction of an obvious clerical error apparent from the face of the bid, and is authorized by FAR § 14.406-2, see Lyon Shipyard, Inc., supra, and therefore such a bid is not required to be rejected under FAR § 52.214-18(c), notwithstanding that solicitation provision's mandatory language. See Welco Enters., Inc., B-237512, Feb. 20, 1990, 90-1 CPD ¶ 196.

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<sup>1</sup>In any case, in view of the fact that the \$1,025 difference in the amount the contracting officer concluded Kuney had intended to bid for line item 555(7) and the figure contained on the worksheets for that line item represents only .037 percent of the Kuney's total bid price, and .25 percent of the amount on the worksheet for that particular line item, this alleged discrepancy is de minimis and did not preclude the correction of Kuney's bid. See Chris Berg v. United States, 426 F.2d 314 (Ct.Cl. 1970); Western Alaska Contractors, B-220067, Jan. 22, 1986, 86-1 CPD ¶ 56.

MKB's final argument concerning the interpretation of our case law in finding this limited exception to the rule that bids that do not price all required items should be rejected is a mere disagreement on an issue on which MKB argued in depth in the course of the protest and was fully considered in our prior decision, and does not constitute a showing of errors of fact or law that warrants reversal or modification of our decision. See R.E. Scherrer, Inc.--Recon., supra.

The request for reconsideration is denied.

  
for James F. Hinchman  
General Counsel